

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

23-CR-89 (HG)

4 United States Courthouse
Brooklyn, New York

5 -versus-

March 31, 2023
11:00 a.m.

6 JOHN YIU,

7 Defendant.

8 -----x
9 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
10 BEFORE THE HONORABLE HECTOR GONZALEZ
DISTRICT JUDGE

11 APPEARANCES

12 For the Government: UNITED STATES ATTORNEY'S OFFICE
Eastern District of New York
13 271 Cadman Plaza East
Brooklyn, New York 11201
14 BY: ANDREW ESTES, ESQ.
Assistant United States Attorney

15 For the Defendant: BY: JEFF CHATBROWE, ESQ.
16

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Rivka Teich CSR RPR RMR FCRR
Official Court Reporter

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(In open court.)

THE COURTROOM DEPUTY: All Rise. Criminal cause for a status conference. Docket 23-CR-89, United States of America versus Yiu.

Please state your appearances.

MR. ESTES: Good morning, your Honor. Andrew Estes for the Government.

THE COURT: Good morning.

MR. CHABROWE: Good morning, your Honor. Jeff Chabrowe for Dr. Yiu.

THE COURT: Good morning. Good morning, Dr. Yiu. How are you this morning?

THE DEFENDANT: Good morning, your Honor. How are you?

THE COURT: This is our initial conference on this matter.

Mr. Estes, I'll turn to you first. Tell me what is going on in the case. Just give me a little background in the case.

MR. ESTES: Since the defendant was arraigned on the Indictment charging him with health care fraud conspiracy and kickback related charges in connection with his work and involvement with the pharmacy, the Government has started producing Rule 16 discovery with its first production on March 16. This was over 50,000 pages of documents, which does

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1 include significant amount of claims data, including data
2 showing prescriptions that were authorized by the defendant
3 and filled at the pharmacy as well as others and paid for by
4 the Medicare and Medicaid programs. The Government has been
5 discussing those materials with defense counsel, including
6 trying to help point to where certain information is in the
7 production, as well what to expect in additional materials, as
8 well as certain electronic devices and other possibly
9 voluminous materials, how they will be made available and
10 whether they will be want to review any portion of those.
11 Those discussions are still ongoing.

12 In addition, as defense counsel is reviewing the
13 materials and the Government is discussing with them, we
14 expect to have discussions about whether there is a
15 possibility of a resolution short of trial, including some of
16 the some the Government's evidence, and we expect those
17 negotiations will be ongoing.

18 That's it in a nutshell, your Honor.

19 THE COURT: Mr. Chabrowe, anything from you in terms
20 of current state of discovery, anything I could do to help in
21 that respect?

22 MR. CHABROWE: I think Mr. Estes clarified it fairly
23 well. We received a substance amount of discovery, some of
24 what is pretty dense business records, last week. We're going
25 through it. I forwarded it and am discussing that with my

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1 client. Certainly we have a good amount still to go through
2 and have more discussions with the Government.

3 I think what we had talked about, Mr. Estes and I
4 talked about the possibility of perhaps setting it down for
5 another conference in 45 days where we will have a better
6 sense, we might have discovery done by then, or at least have
7 it all produced. I don't know if I would have gone through it
8 all, but a better sense of where we're going.

9 THE COURT: I'm happy to put it down for an
10 adjournment at this point. I won't even contemplate setting a
11 schedule for motions or anything like that since it's too
12 early for you to know what if any.

13 MR. CHABROWE: I don't think we're there yet, your
14 Honor, whether or not we think motions would be appropriate.

15 THE COURT: All right. How does May 15 at 2:00 p.m.
16 for our next conference look for you, Mr. Chabrowe?

17 MR. CHABROWE: Is it possible to do it another day
18 that week?

19 THE COURT: Sure. I'll give you a choice. How
20 about the 16th or 18th at 3:00 p.m.

21 MR. CHABROWE: Actually, if we could do it the 16th
22 that's fine.

23 THE COURT: So May 16, 3:00 p.m.

24 Mr. Estes, I will ask if you're available, but the
25 Government is always available.

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1 MR. ESTES: Yes, your Honor. The Government will be
2 available then too, of course.

3 THE COURT: I'll set this down for May 16 at
4 3:00 p.m.

5 Is there an application under the Speedy Trial Act?

6 MR. ESTES: Yes, your Honor. In light of the
7 complexity of the case, given the volume of discovery, as well
8 as some of the materials in the discovery being in foreign
9 languages such as Cantonese, and the ongoing negotiations that
10 the Government expects will continue in the meantime, the
11 Government believes it's appropriate to exclude time in the
12 interest of justice between now and May 16.

13 THE COURT: Mr. Chabrowe, any objection to that?

14 MR. CHABROWE: No objection.

15 THE COURT: Mr. Estes, in addition to the volume and
16 nature of the discovery, language and translation issues, are
17 there also HIPAA or other privacy issues that may make
18 discovery more complex?

19 MR. ESTES: Patient-related records do involve
20 patient privacy. They are produced pursuant to a protective
21 order, that is another issue that does both require
22 sensitivity and additional complexity.

23 THE COURT: Also, in addition, I know given the
24 nature of some of the cases that you in particular
25 investigate, are there inter-investigation or

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1 cross-investigation issues in terms of discovery; meaning, are
2 there related investigations maybe not pertaining directly to
3 this defendant, to Dr. Yiu, but that may require review of
4 other production?

5 MR. ESTES: Yes, your Honor. In connection with
6 this investigation and the charged conduct, and related
7 pharmacy and overlapping conduct which the Government has been
8 producing to the defense as well. And we'll continue to have
9 discussions about what may be possibly related, or perhaps
10 not, but taking a broad view of it so it can be provided to
11 them. As well as separate areas of parallel of investigation,
12 which the Government does not believe are part of the
13 prosecution in this case, and we'll continue to have
14 discussions as appropriate.

15 THE COURT: I'll adjourn the matter to May 16 at
16 3:00 p.m. I'm going to exclude the period from today through
17 May 16 of this year. I'm going to exclude that period of time
18 in computing time under the Speedy Trial Act.

19 Mr. Chabrowe, had you an opportunity to discuss the
20 Speedy Trial Act with your client and its implications?

21 MR. CHABROWE: I have not.

22 THE COURT: Why don't you take a minute now and
23 discuss it with him and that way he understands what you just
24 consented to.

25 MR. CHABROWE: Sure.

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1 (Discussion was had off the record.)

2 MR. CHABROWE: I've explained that to my client.

3 THE COURT: Dr. Yiu, do you have any questions about
4 the Speedy Trial Act?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: On the application of the Government,
7 with the consent of the defense, I'm going to exclude time
8 from today through May 16 in computing time under the Speedy
9 Trial Act. I find that the ends justice are served by the
10 granting of continuance outweigh the interest of the public
11 and the defendant in a speedy trial. I find that for the
12 following reasons.

13 The first is that I find that this case does qualify
14 as a complex case given the nature and volume of the
15 discovery. Not only the volume, but the fact that the
16 discovery includes material that's been represented to me that
17 is in a foreign language that will require extra time for
18 translation. That information also includes some volume of
19 documents that are protected because of the nature of the
20 information being medical or patient information. And also
21 the fact that there are related investigations that might
22 require review of the production from those investigations.

23 My first finding is that the case does qualify as a
24 complex case as a basis to exclude time under the Speedy Trial
25 Act. I find that the failure to grant this continuance would

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1 deny counsel for the defendant and counsel for the Government
2 the reasonable time necessary to exchange and review that
3 discovery in order to allow the defense adequate time to have
4 pretrial preparation. I also find that the failure to grant
5 the continuance would deny counsel for the defendant and
6 counsel for the Government the reasonable time necessary to
7 explore potential plea negotiations.

8 For these various reasons, I'm excluding time in the
9 interest of justice between now and May 16.

10 Anything else?

11 MR. ESTES: Not from the Government, your Honor.

12 MR. CHABROWE: Nothing from the defense. Thank you,
13 your Honor.

14 THE COURT: Thank you.

15 (Whereupon, the matter was concluded.)

16 * * * * *

17 I certify that the foregoing is a correct transcript from the
18 record of proceedings in the above-entitled matter.

19 /s/ Rivka Teich

20 Rivka Teich, CSR RPR RMR FCRR
21 Official Court Reporter
22 Eastern District of New York
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